IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.2324 of 2006
To
FIRST APPEAL No.2327 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
&
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPL. LAQ OFFICER & ANR. - Appellants
Versus
GOMTIBEN AMBALAL & ANR. - Respondents

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Appearance:
MS Krina P Calla, AGP for Appellants in FA Nos.2324-2325 of 2006 ***AND***
MS Tanuja N Kachchhi, AGP for Appellants in FA Nos.2326 of 2006 ***AND***
MR K D PANDYA, AGP for Appellants in FA No.2327 of 2006.
MR AJ PATEL for Original Claimants.
RULE NOT RECD BACK for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/11/2006

COMMON RAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

The abovenumbered appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated February 7, 2005 rendered by the learned 2nd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural) at Ahmedabad, in Land Acquisition Case Nos.717 of 1998 to 720 of 1998 by which the claimants are awarded additional compensation at the rate of Rs.23.00 per square metre for their acquired lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.50 ps. per square metre, by his award dated November 30, 1996.

2. A proposal was received by the State Government from the Executive Engineer, Construction Division No.4/4, Narmada Canal, Mehsana, to acquire agricultural lands of Village Ghelada, Taluka: Viramgam, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On perusal of the said proposal, the State Government was satisfied that the lands of Village: Ghelada were likely to be

needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued, which was published in the official gazette on April 16, 1994. The landowners were served with the notices under Section 4 of the Act and they opposed the proposed acquisition. After considering their objections, a report under Section 5-A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of Village: Ghelada specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on February 15, 1995. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.50/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation

to the claimants at the rate of Rs.1.50 ps. per square metre by his award dated November 30, 1996. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Ahmedabad (Rural) at Ahmedabad, where they were registered as Land Acquisition Case Nos.717 of 1998 to 720 of 1998.

3. On behalf of the claimants, witness Patel Gandabhai Shivdas was examined at Exhibit 24. Over and above stating that the lands acquired were highly fertile and that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per year per *vigha* from the sale of agricultural produces, the witness produced two previous awards for consideration of the Court. One award related to the lands of Village: Madrisana whereas another related

to the lands of Village: Fatehpura. The witness mentioned in his testimony before the Court that the lands, which were subject matters of two previous awards, were similar in all respects to the lands acquired in the instant case from Village: Ghelada. He also produced 7/12 extracts of the lands acquired, at Exhibits 18 to 21 to establish that the lands acquired were irrigated lands. Though the witness was cross-examined at length by the learned District Government Pleader for the appellants, nothing could be elicited to doubt his assertion that the lands, which were subject matter of the two previous awards were similar in all respects to the lands acquired in the instant case.

4. On behalf of the appellants, witness Patel Ambalal Bechardas, who was then discharging duties in Ahmedabad Division, was examined at Exhibit 34. In his cross-examination, the witness had to admit that the boundary of Village Ghelada was touching the boundary of Village: Madrisana. It was also admitted by this witness that crops like *juvar, bajra, c*ereals, etc. were being grown on the lands acquired

and that similar crops were also being raised on the lands of Village: Madrisana, which were acquired earlier.

5. On the basis of evidence adduced by the parties, the Reference Court in the instant case was of the opinion that the two previous awards relating to the lands of Village: Madrisana and Village: Fatehpura were relevant and furnished good guidance for the purpose of determination of market value of the lands acquired in the instant case. The Reference Court noticed that notification under Section 4(1) of the Act was published in the official gazette on June 20, 1995 for the purpose of acquiring the lands of Village: Madrisana whereas notification under Section 4(1) of the Act was published in the official gazette on September 5, 1992 for acquiring the lands from Village: Fatehpura and as there was time-gap of about one year & eight months in publication of notifications, which were subject matter of previous awards and notification issued in the instant case, the claimants were entitled to reasonable rise in price of lands at the rate of 10% per annum. On the

basis of this principle, the Reference Court has awarded additional compensation to the claimants at the rate of Rs.23.00 per square metre by the impugned award, giving rise to the instant appeals.

6. This Court has heard Mr.K.D.Pandya, learned Assistant Government Pleader for the appellants, and Mr.A.J.Patel, learned counsel for the claimants, at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which contains oral as well as documentary evidence adduced by the parties before the Reference Court.

7. Though it was claimed by the witness for the claimants that the lands acquired in the instant case were highly fertile and that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per year per *vigha* from the sale of agricultural produces, no documentary evidence could be adduced by the witness to substantiate his claim regarding income earned by each claimant. The record does not indicate that the enhanced compensation was claimed

by the claimants either on the yield basis or on the basis of comparable sale instances. What was relied upon by the claimants was two previous awards of the Reference Court, one of which related to the lands of Village: Madrisana whereas another related to the lands of Village: Fatehpura. The previous award relating to the lands of Village: Madrisana was produced at Exhibit 22. It indicates that the lands of Village: Madrisana were acquired for the public purpose of Narmada Canal pursuant to publication of notification issued under Section 4 of the Act in the official gazette on June 20, 1995 whereas in the instant case, the notification under Section 4(1) of the Act was published in the official gazette on April 16, 1994 and, therefore, this Court is of the opinion that the previous award of the Reference Court relating to the lands of Village: Madrisana would not be relevant for the purpose of determining the market value of the lands acquired in the instant case. The previous award of the Reference Court relating to the lands of Village: Fatehpura produced at Exhibit 23 indicates that the lands from the said village were acquired for the public purpose of

construction of Narmada Canal pursuant to publication of notification under Section 4 of the Act in the official gazette on September 5, 1992. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.1.25 paise per square metre by his award dated August 16, 1994. Feeling aggrieved, the claimants had sought references. Accordingly, the references were made to the Reference Court and the Reference Court awarded compensation to the claimants at the rate of Rs.20.00 per square metre for their acquired lands. It may be mentioned that for acquiring the lands in the instant case, notification under Section 4(1) of the Act was published in the official gazette on April 16, 1994 whereas notification for acquiring the lands of Village: Fatehpura was published in the official gazette on September 5, 1992 and in view of time-gap of one year and eight months between the issuance of two notifications, this Court is of the opinion that the claimants would be entitled to the benefit of rise in price of the lands at the rate of 10% per annum. It is well-settled that the previous award of the Reference Court relating to the lands of a

village, which has attained finality, can be treated as a good piece of evidence for determining the market value of similar lands subsequently acquired from the adjoining village. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of Village: Fatehpura for the purpose of determining the market value of the lands acquired in the instant case. However, it is agreed between the counsels for the parties that on the basis of the previous award of the Reference Court relating to the lands of Village: Fatehpura, the claimants would be entitled to compensation in all at the rate of Rs.23.00 per square metre and not at the rate of Rs.24.50 paise per square metre, as held by the Reference Court and to that extent, the appeals will have to be allowed. Except the mistake committed by the Reference Court in calculating the rate at which the compensation has to be paid to the claimants, this Court finds that the Reference Court has recorded correct findings of facts on appreciation of evidence, to which the settled principles of law have been applied and,

therefore, the claim of the appellants that the award passed by the Special Land Acquisition Officer should be restored, cannot be accepted.

8. For the foregoing reasons, the appeals partly succeed. The judgment and award dated February 7, 2005 rendered by the learned 2nd Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural), Ahmedabad, in Land Acquisition Nos.717 of 1998 to 720 of 1998 awarding in all compensation to the claimants at the rate of Rs.24.50 paise per square metre is hereby modified and it is held that the claimants would be entitled to compensation in all at the rate of Rs.23.00 per square metre for their acquired lands. Other benefits, which are granted to the claimants by the impugned award, are not interfered with at all and are hereby confirmed. The appeals are partly allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra